



State of Connecticut
Department of Developmental Services

DDS

Dannel P. Malloy
Governor

Terrence W. Macy, Ph.D.
Commissioner

Joseph W. Drexler, Esq.
Deputy Commissioner

DEPARTMENT OF DEVELOPMENTAL SERVICES TESTIMONY
BEFORE THE LEGISLATIVE INSURANCE AND REAL ESTATE COMMITTEE

Raised Bill. No. 205, An Act Concerning Insurance Coverage for the Birth to Three Program.

February 28, 2012

Senator Crisco, Representative Megna, and members of the Insurance and Real Estate Committee. I am Terrence W. Macy, Ph.D., Commissioner of the Department of Developmental Services (DDS), and I am here to testify in support of Raised Bill No. 205, An Act Concerning Insurance Coverage for the Birth to Three Program. With me today is Linda Goodman, Director of the Connecticut Birth to Three program.

Under the administration of DDS, the Connecticut Birth to Three System offers developmental evaluations and early intervention services to infants and toddlers under the age of three who have disabilities or developmental delays, including autism. The System is administered under the federal Individuals with Disabilities Education Act (IDEA) Part C and its regulations. Each year, the state receives approximately \$4 million in IDEA Part C funding to help support the administration of the Birth to Three Program and related service delivery. Approximately half of that amount is used for administration and half goes toward direct services. The state also appropriates nearly \$36 million to pay for direct services. The IDEA states that the federal funding is to supplement, not supplant state and local funding for early intervention. In order to receive this funding, the IDEA requires each state to annually assure that there is a "maintenance of effort" which is defined as the state spending as much or more from state and local funds for early intervention in one year as it did in the previous year. The definition of "state and local funds" has always excluded reimbursement from commercial health insurance plans. As the federal agency that administers the IDEA, the U.S. Department of Education has the authority to determine whether or not a state has met its obligation for maintenance of effort. If the U.S. Department of Education determines that a state has not met this obligation, it has the right to require the state to make up the difference by refunding the equivalent state money to the federal government.

In recent revisions to the IDEA Part C regulations that become effective on July 1, 2012, there is a new provision that says a state may establish a new baseline to include annual health insurance

reimbursements and the state may then count future health insurance reimbursement toward "maintenance of effort" if the state has enacted statutory language regarding commercial health insurance coverage that (1) protects annual and lifetime caps; (2) ensures that billing for early intervention services alone will not cause a family to be denied health insurance coverage; and (3) ensures that the billing for early intervention services alone will not be the basis for increasing the family's health insurance premiums. If Connecticut enacts such language, it would be implemented when we receive our next IDEA Part C grant in July 2012.

State funding for Birth to Three was reduced in fiscal years 2012 and 2013, by \$1.6 million and \$3.2 million respectively in anticipation of the ability to collect greater amounts of insurance reimbursement due to changes made in the 2011 Legislative Session to CGS Section 38a-516a that went into effect on January 1, 2012. Insurance reimbursement for Birth to Three Services was almost \$4 million in FY11 and is expected to increase in fiscal years 2012 and 2013.

Currently, CGS Sections 38a-490a and 38a-516a already cover the first IDEA requirement which is to protect annual and lifetime caps. However, those statutes are silent on the other two required items related to billing for Birth to Three services, potentially causing a denial of coverage or premium increases. This proposed legislation would amend CGS Sections 38a-490a and 38a-516a to require that individual and group plans meet the last two IDEA insurance requirements, enabling the state to acknowledge the contributions of insurance companies in the funding of the Birth to Three System.

I'm attaching a letter from the Office of Special Education Programs (OSEP) dated May 4, 2011, to a state who inquired about the implications of the maintenance of effort requirement on funding. The letter provides informal guidance that a state who fails to maintain effort in a particular fiscal year would be subject to liability and could not take a pass on a portion of forthcoming Part C funds to remedy the situation. The passage of Senate Bill 205 would help Connecticut towards meeting maintenance of effort requirements going forward.

Thank you for raising Senate Bill 205. I urge your support of this bill and would be happy to answer any questions that you might have.



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

The Honorable Robert Moser, MD, Secretary &
Pat Kuester, MPA, Chief Fiscal Officer
Kansas Department of Health and Environment
1000 SW Jackson Street, Suite 570
Topeka, Kansas 66612-1368

MAY - 4 2011

Dear Secretary Moser and Ms. Kuester:

This is in response to the inquiry from your State to the Office of Special Education Programs (OSEP) at the U.S. Department of Education (Department) regarding the maintenance-of-effort (MOE) requirement under Part C of the Individuals with Disabilities Education Act (Part C or IDEA). Specifically, your State has asked the following:

- (1) What is the liability if a State fails to maintain effort?
- (2) If the State must pay back funds to the Department for its failure to maintain effort for a particular fiscal year, how is the amount computed?
- (3) If the State fails to maintain effort, can it pay the liability by not drawing down all of its Federal funds in an amount equal to the MOE shortfall?

IDEA section 637(b)(5)(B) requires that IDEA Part C funds "be used so as to supplement the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those State and local funds." The Part C regulations in 34 CFR §303.124(b) provide that, "the total amount of State and local funds budgeted for expenditures in the current fiscal year for early intervention services for children eligible under this part and their families must be at least equal to the total amount of State and local funds actually expended for early intervention services for these children and their families in the most recent preceding fiscal year for which the information is available." Allowances for the level of MOE required may be made under the following two circumstances: (1) Decreases in the number of children who are eligible to receive early intervention services; and (2) Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of facilities.

If the State fails to maintain effort in a particular fiscal year, the State would be subject to liability under the Single Audit Act. The remedy would be for the State to pay back the amount by which it failed to meet the MOE requirement in a particular fiscal year under 34 CFR §303.124(b). The actual amount that the State would need to pay back would be based on the State's shortfall in meeting the total amount of State and local public expenditures for the provision of early intervention services in that fiscal year, as supported by records of those expenditures.

You asked whether such payment could be made by liquidating less than the full allotment of your State's annual IDEA Part C allotment. A State could not decline to draw down all of its Federal IDEA Part C award funds to offset the amount by which the State failed to maintain effort because this would constitute repayment using Federal funds. The State's repayment must

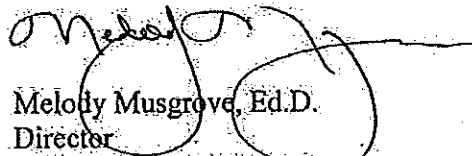
Page 2 – Honorable Robert Moser, MD & Ms. Pat Kuester

be made with non-Federal funds, or Federal funds for which accountability to the Federal government is not required. *See* 2 CFR Part 225, Appendix B, #16. As a result of the enactment of the American Recovery and Reinvestment Act of 2009 (ARRA), States received a large one-time increase in Federal Fiscal Year 2009 IDEA Part C funds. A State is prohibited from using Federal award funds, including ARRA IDEA Part C funds, to pay back the amount by which the State failed to maintain effort.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the Department of the IDEA in the context of the specific facts presented.

If you have further questions, please do not hesitate to contact Ruth Ryder at 202-245-7513 or by email at ruth.ryder@ed.gov.

Sincerely,



Melody Musgrove, Ed.D.
Director
Office of Special Education Programs

Enclosure

cc: Part C Coordinator